

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

IMERYS CARBONATES USA, INC.

and

Case No. 10-CA-232952

ROBERT JOSEPH BLANTON, an Individual

UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION,  
AFL-CIO

and

UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION,  
LOCAL 254-06, AFL-CIO

Case Nos. 10-CB-232953  
10-CB-240168

and

ROBERT JOSEPH BLANTON, an Individual

*Kurt Brandner and Matthew Turner, Esqs.*  
for the General Counsel.

*Thomas Kilpatrick, Esq., (Dunwoody, Georgia)*  
for the Respondent Imerys Carbonates USA, Inc.

*Richard Rouco, Esq. (Quinn, Conner, Weaver, Davies & Rouco, LLP,  
Birmingham, Alabama.)* for the United Steelworkers International Union  
and United Steelworkers Local 254-06

**DECISION**

**STATEMENT OF THE CASE**

**Arthur J. Amchan, Administrative Law Judge.** This case was tried in Atlanta, Georgia on December 9-11, 2019. Robert Blanton filed charges against Imerys Carbonates and United Steelworkers Local Union 254-06 on December 18, 2018.

Charge 10-CB-232953 was amended on August 29, 2019 to allege violations of the Act by the United Steelworkers International Union. Charge 10-CB-240168 was amended on September 6, 2019 to allege violations of the Act by the United Steelworkers International Union. The General Counsel issued a consolidated complaint on September 19, 2019.<sup>1</sup>

The General Counsel alleges that on December 6, 2018, Respondent Union, violated Section 8(b)(1) (A) of the Act in that Chief Steward Joseph Young threatened Charging Party Blanton with physical violence, battered Blanton with chest bumps and told Blanton that the Union would not assist him because he criticized the Union and expressed interest in decertifying it.<sup>2</sup>

The General Counsel also alleges that on December 6, 2018, Respondent Union violated Section 8(b)(2) by informing Respondent Employer, Imerys Carbonates, that Robert Blanton was the aggressor in a physical altercation with Young because Blanton criticized the Union and expressed interest in decertifying it. By this conduct the General Counsel alleges that the Union attempted to cause and caused Imerys to discharge Blanton.

Also, the General Counsel alleges that Respondent Union, by Local Union President Darryl Ford, violated Section 8(b)(1)(A) by threatening employee Tylor Waters with possible job loss if he provided Imerys with a witness statement regarding the confrontation between Charging Party Blanton and Chief Steward Young. The General Counsel alleges Ford made this threat because Blanton criticized the Union and expressed interest in decertifying it.

Further, the General Counsel alleges that Respondent Union violated Section 8(b)(1)(A) in failing to take Blanton's grievance about his discharge to arbitration because he criticized the Union and expressed interest in decertifying it.

The General Counsel alleges that Imerys violated Section 8(a)(3) and (1) by discharging Robert Blanton on December 6, 2018 because of his anti-union and concerted activities. For the reasons stated below, I dismiss all these allegations except the allegation that Union President Ford violated Section 8(b)(1)(A) in discouraging Tylor Waters from making a statement to the Union.

On the entire record,<sup>3</sup> including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent Union and Respondent Employer, I make the following

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<sup>1</sup> Respondent, USWA has filed a motion to dismiss the complaint as it pertains to the International Union. As grounds, it notes that charges were not filed against the International until after the 6-month period set forth in Section 10(b) had elapsed. The International Union, by Staff Representative Kelly Smith, advised Blanton by letter dated January 26, 2019 that it was not taking his grievance to arbitration, G.C. Exh. 4. Given my disposition of this case on the merits, I see no need to reach this issue.

<sup>2</sup> The General Counsel alleges that the United Steelworkers of America International and Local Union 254-06 are jointly responsible for all the Section 8(b)(1)(A) and (b)(2) alleged violations in this case.

<sup>3</sup> Tr. 174, line 12 is not transcribed correctly. The witness certainly did not say, "I will f—g stand."

## FINDINGS OF FACT

### I. JURISDICTION

Respondent, Imerys Carbonates USA, a corporation, operates a limestone mine in Whitestone, Georgia,<sup>4</sup> where it annually ships and sells goods valued in excess of \$50,000 directly to points outside the State of Georgia. Respondent Imerys admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Unions and the Employer admit, and I find that the United Steelworkers International Union and United Steelworkers Local Union 254-06 are labor organizations within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

Respondent Imerys Carbonates hired the Charging Party Robert Blanton on August 1, 2018 to work at its limestone mine in Whitestone, Georgia. His job was to load trucks with finished product. His normal workstation was on a catwalk about 20 feet above ground level located in front of 4 silos containing crushed limestone.

After being hired, Blanton almost immediately joined Steelworkers Local 254-06, which represents Imerys' production and maintenance employees at the mine. Local 254-06 is an amalgamated union, made up of bargaining units working for different employers. The local is organized in this fashion because none of the bargaining units are big enough to be a local union by themselves. The president of local 254-06 is Darryl Ford, who works for the American Red Cross near Macon. The highest-ranking union representative at the Whitestone mine during the 4 months of Robert Blanton's employment was Joseph Young, its chief steward. In August 2018, at the time Imerys hired Blanton, Imerys and Local 254-06 were engaged in collective bargaining for a successor contract. They reached agreement and in early September Darryl Ford conducted a meeting in which the contract was ratified. The new contract raised employee wage rates and improved vacation benefits. On the other hand, it provided that employees who worked more than 8 hours in a day would be paid straight time unless they worked more than 40 hours in a week. In the latter case they would receive premium pay only for the hours worked in excess of 40.

In mid-October 2018, an Imerys human resources representative conducted a meeting at the mine to discuss changes in insurance coverage. Apparently as an aside, she announced that at the beginning of 2019, Imerys would start paying employees bi-weekly instead of weekly. A number of employees were upset by this announcement, including Chief Steward Young. Young told unit employees that this was not discussed during bargaining and he was not sure Imerys could make such a change without bargaining with the Union.<sup>5</sup>

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<sup>4</sup> This mine is located in the northwestern part of Georgia, near the border with Tennessee.

<sup>5</sup> The Union filed a grievance over this change. The grievance was settled in March 2019 on terms in which each unit employee received an extra \$500 (a week's salary), and Respondent implemented bi-

On December 3, 2018, Joseph Young conducted a union meeting at which he discussed Imerys' plan to pay bi-weekly. Blanton did not attend this meeting. However, he was either disenchanted with the Union from the outset of his employment or became disenchanted with it during his employment. Blanton developed a particular animosity towards Union President Darryl Ford—for reasons neither apparent nor justified on this record.

On December 5, 2018, Blanton called the Steelworkers International Union in Pittsburgh. Blanton told a Steelworkers paralegal that unit employees were very upset with the quality of representation they were getting and that he wanted the Union to send him cards so employees could withdraw from the Union. USWA District Director Daniel Flippo directed Staff Representative Alexander Perkins to call Blanton, Union Exhibit 21. Perkins was covering for Staff Representative Kelly Smith, who normally serviced Local 254-06 but was on medical leave.

Perkins called Blanton on December 5. Blanton informed Perkins that Imerys was going to switch from weekly to biweekly pay. Perkins told Blanton that he did not think the company could do that without bargaining and if they did, he would file an unfair labor practice charge.

During this call, Blanton alleged that local union president Darryl Ford was in bed with and was being bribed by Imerys. Not only is there no evidence to support this assertion in the record, there is no evidence as to what caused Blanton to make this accusation.<sup>6</sup>

At some point, Blanton told Perkins that he expected to be fired and asked for help in finding alternative employment. Blanton did not offer any explanation for his assertions about Ford or to why he thought Respondent would terminate him, Union Exh. 5. This suggests that Blanton knew of reasons that Imerys might want to discharge him other than what would occur the next day.

Blanton said he was thinking of moving to Indiana. Perkins offered to help Blanton look into employment opportunities with USWA represented employers in Indiana.<sup>7</sup> Afterwards, Blanton offered to help recruit employees to join the Union.

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weekly paydays.

<sup>6</sup> Blanton was unhappy with aspects of the collective bargaining agreement—particularly the provision that employees were paid straight time unless they worked more than 40 hours a week. There is no evidence that anyone in the Union supported Imerys' desire to pay bi-weekly.

<sup>7</sup> Perkins' account of his conversation with Blanton is uncontradicted in part because Blanton left the hearing room immediately after testifying on the morning of December 9, 2019 and did not return.

During the call, Perkins also initiated a 3-way call between himself, Blanton and Darryl Ford. Blanton called Ford names and accused him of collusion with Imerys. On the evening of December 5, Ford called steward Joseph Young. Ford told Young to “troubleshoot” any damage Blanton had done with the union’s members, G.C. Exh. 6.<sup>8</sup>

Ford testified that he did not ask Young to speak with Blanton. I have no way of telling whether this is true or not. However, it makes no difference to the outcome of this case. Even if Ford instructed Young to talk to Blanton, there is no evidence he told Young to start a verbal or physical altercation with him. Moreover, there was good reason for Young to talk to Blanton, who was suggesting to employees that they go on strike over the payday issue, despite a no-strike clause in the collective bargaining agreement.

### *The Events of December 6, 2018*

Robert Blanton started work on December 6, at about 4:00 a.m. which was his normal starting time. This encompassed the end of the third shift and beginning of the first shift which started at 7:00 a.m. Blanton testified that in the breakroom he told third shift employees that Perkins told him that the Union would file charges over the change to bi-weekly pay and that there was a six-month strike fund. Further, he told these employees that if they wanted to strike, they would be reimbursed for the time lost, Tr. 41.<sup>9</sup>

Joseph Young reported to work at about 6:50 a.m. and clocked in. He heard that Blanton had been talking to employees about going on strike. Young testified that he decided to talk to Blanton so that Blanton would know that the Union was going to file a grievance over the bi-weekly pay and that the employees could not strike, Tr. 205-08, 217.

According to employee Tylor Waters, Young did not appear angry but mentioned that Blanton had called the Steelworkers International about the bi-weekly pay issue and that Young wanted to talk to Blanton.<sup>10</sup> Young testified that he wanted Blanton to know that the Union was going to file a grievance over Imerys’ plan to institute bi-weekly pay. Young made no statements indicating hostility towards Blanton, Tr. 158. Although Blanton normally went to the breakroom at 7:00, he did not do so on December 6, because he expected trouble. Since there is no explanation for why Blanton expected trouble, I infer he intended to start some. Indeed, his comment to Perkins the day before about moving to Indiana suggests that he was looking to get terminated rather than quit.

<sup>8</sup> I do not conclude that Young was lying when he testified that he did not recall talking to Ford on the evening of December 5.

<sup>9</sup> At Tr. 109-110, on cross, Blanton testified that he was discussing striking over the collective bargaining agreement, not the bi-weekly pay issue-even though he understood that the agreement contained a no-strike clause.

<sup>10</sup> Tylor Waters is the only witness to corroborate Blanton’s testimony in any respect, Tr. 145, 157-58.

After clocking in, Young got into a small cart-like vehicle operated by employee Ruel Johnson. Johnson regularly drove Young to his workstation at the rock crusher which was located some distance from the breakroom. Young asked Johnson to stop in front of Blanton's workstation.

Young got out of the vehicle and motioned for Blanton to come down to ground level to speak with him. Blanton did so. Almost as soon as he reached ground level, Blanton began cursing at Young. Blanton testified that Young started the conversation by saying, "so I'm the dumb fuckin' hillbilly up here running things," Tr. 44. Young denies this. I credit Young. There is no evidence in this record that Blanton ever called Young that or that anyone told Young that Blanton called him such.

Blanton then walked to the breakroom some 50-70 feet away, Young followed him. Blanton testified that Young, who is considerably bigger<sup>11</sup> than Blanton kept bumping him with his chest on the way to breakroom and threatening to assault him; Young denies this.<sup>12</sup> Blanton continued to curse at Young all the way to the breakroom. That Young followed Blanton after Blanton made it clear that he did not want to talk to Young, does not lead me to credit Blanton's testimony that Young assaulted him. Young had good reason to persist in talking to Blanton given the fact that Blanton was encouraging unit employees to strike illegally.

Blanton testified that when he and Young reached the breakroom, Young slammed into his back and knocked him through the doorway. Then, according to Blanton, he turned around and pushed Young, Tr. 47. Blanton cursed at Young after they entered the breakroom. Two employees, Douglas Harper and Jeremiah Jerit, were in the breakroom. At some point, Blanton turned towards Young thrust his hands out and touched or shoved Young in the chest, while telling Young to "get the fuck away from him."

Neither Harper nor Jerit corroborated Blanton's account of being knocked through the doorway. Jerit's testimony at Tr. 300-301, 306 implicitly contradicts Blanton's account. Jerit testified that he saw Blanton and Young approach the breakroom through a window in the breakroom door. Jerit testified that he did not see Young chest-bump Blanton or bump him as they came up to the door.

Blanton and Young then left the breakroom. At trial, Blanton claimed that Young continued to chest bump him in the back. This is inconsistent with notes taken by Imerys' Human Resource Manager Shannon Smith in his interview of Blanton on December 6 and Shannon Smith's uncontradicted testimony about that interview, Tr. 448-49. One reason Shannon Smith's testimony in this regard is uncontradicted is that Robert Blanton left the hearing immediately upon concluding his testimony and did not return.

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<sup>11</sup> Blanton estimated that Young is between 6'2" and 6'4" and between 240 and 260 lbs. Blanton is about 5'8" and between 150-155 lbs. My observation at trial is that these estimations are fairly accurate.

<sup>12</sup> At Tr. 218, Young testified that he did not recall coming into contact with Blanton when Blanton turned to face him. However, he categorically denied chest bumping Blanton in the back.

At some point Blanton went into the office of a building called the Raymond mill. Blanton testified that Young threatened to assault him just before he entered the Raymond mill office. Blanton's testimony at Tr. 49-50 is unclear or inconsistent as to whether any employees witnessed Young threatening him in front of the Raymond mill. He testified that in the Raymond mill, Jeremiah Jerrit said to Blanton that he couldn't believe Blanton "didn't beat his ass," Tr. 51. Jerrit, a witness in this case, gave no indication he was aware of any interaction between Blanton and Young after Blanton left the breakroom, Tr. 303-04. Jerrit appears to have had some relationship with Blanton outside of work, Tr. 299.

Nobody, including Tylor Waters, who according to Blanton was in the Raymond mill office, corroborated Blanton's testimony in this regard. Waters testified that he heard Young tell Blanton, "you need to watch what you say and do, because that's why you're going to end up getting fired," Tr. 149. Waters did not testify that he heard Young physically threaten Blanton at the Raymond mill.

Young testified that upon leaving the breakroom, he got into Ruel Johnson's cart and proceeded to his workstation at the limestone crusher. He testified that after Blanton left the breakroom, he had no further interaction with Blanton, Tr. 221-22.

Ruel Johnson testified that Blanton was cursing at Young after they returned from the breakroom, Tr. 233-34. Jeremiah Jerrit testified that Young followed Blanton out of the breakroom. I don't deem either's testimony to support the proposition that Young was lying. Young had to go back to Johnson's "buggy," which was parked close to the Raymond mill in order to get to his workstation. It is clear that Young left the breakroom and travelled in the same direction as Blanton within seconds after Blanton left the breakroom, Tr. 221, 255. However, this does not establish that Young's testimony, that he had no interaction with Blanton after leaving the breakroom, is false. It also does not establish that Young made any effort to prolong the altercation after he and Blanton left the breakroom.

Sonny Pierce, Respondent's plant or production manager, went to the crusher and spoke to Young. Young told Pierce that he had an altercation with Blanton over union business. Further, Young told Pierce that Blanton had given him a schoolyard push, but that he had not touched Blanton, Tr. 200-204. Young did not mention following Blanton to the breakroom or that Blanton told him to get away from him in the breakroom. No party called Pierce as a witness.<sup>13</sup> The record does not reflect whether Pierce reported the substance of this conversation to Shannon Smith or Chris DiBase, the management officials who made the decision to fire Blanton.

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<sup>13</sup> The General Counsel argues that I should draw an adverse inference from Respondents' failure to call Pierce as a witness. I decline to do so. First of all, according to Imerys, Pierce played no role in Blanton's termination other than gathering witnesses, Tr. 463. Secondly, the General Counsel could have subpoenaed Pierce.

Douglas Harper, one of the employees present in the breakroom when Blanton touched Young, went to maintenance manager Jaime Elliott and reported the incident. Harper had been a union steward sometime prior to 2015 but has had no position with the Union since.

Elliott went to Imerys human resources manager Shannon Smith, who was at the Whitestone mine for a regularly scheduled management meeting. Smith had plant manager Sonny Pierce summon employees to meet with him and conducted an investigation.

Smith interviewed Blanton, Harper, Ruel Johnson, Jeremiah Jerrit, and Drew Moss, Tr. 446-449, Union Exhibit 4.<sup>14</sup> Smith testified that he interviewed Young after he fired Blanton. Smith took notes of his interviews except his interview with Young.

Moss told Smith that he did not witness the incident.<sup>15</sup> Johnson told Smith that he saw Blanton yelling and cursing at Young, while Young tried to calm Blanton down. Johnson reported that he did not see any physical contact.

Harper told Smith that Blanton was yelling and cursing at Young inside the breakroom and that Blanton shoved Young in the chest. Harper told Smith that Young did not retaliate. Jerrit<sup>16</sup> told Smith that Blanton and Young were speaking loudly to each other as they approached the breakroom. Their conversation continued inside the breakroom and then Blanton pushed Young in the chest. Young did not retaliate.

According to Smith's interview notes, Blanton told Smith that Young approached him aggressively and asked what Blanton was doing "calling the Union above him." Blanton told Smith that Young told him that Blanton should have come to Young first. Smith's notes do not contain the allegation that Young started the conversation with, "so I'm the 'dumb fuckin' hillbilly.'" According to Blanton, Young continued to badger him and as he was walking away, repeatedly bumped Blanton with his chest.<sup>17</sup> Once in the breakroom, Young continued badgering him and Blanton shoved Young in the chest to get away from him. Blanton told Smith that he left the breakroom and Young did not follow him.

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<sup>14</sup> Smith testified that Union Exhibit 4 was drafted in January 2019 from handwritten notes he took, assumedly on December 6.

<sup>15</sup> Blanton testified that it was from Drew Moss that he learned that Tylor Waters had witnessed his altercation with Young. Moss did not testify in this proceeding and Shannon Smith's notes do not reflect that Moss mentioned Waters to Smith. One would expect that Moss would do so if he was aware of a witness to the altercation.

<sup>16</sup> Misspelled as Jarrett in Smith's report.

<sup>17</sup> Blanton also called Union Staff Representative Alexander Perkins on the morning of December 6. In that call Blanton alleged that Young had been chest-bumping him and threatened to beat him up.



Assuming that Shannon Smith's uncontradicted testimony and notes are accurate as to what Blanton told him when interviewed on December 6, there are some significant differences from Blanton's testimony at trial. Blanton at trial testified that  
 5 Young cursed at him before he started cursing at Young. At trial, contrary to Smith's notes, Blanton testified that Young followed him out of the breakroom and continued to chest bump him, Tr. 48. Young at trial indicated there was no interaction between him and Blanton after Blanton left the breakroom, Tr. 221-22. If there was no interaction between Blanton and Young after they left the breakroom, Tylor Waters testimony at Tr.  
 10 169-172, in support of Blanton's account is inaccurate, if not knowingly false. Waters testified that he saw Young chest bump Blanton after they had left the breakroom. While I do not credit Waters, there is no evidence in this record to explain why Waters would fabricate testimony, if it was in fact fabricated. Moreover, in December 2018 or January 2019, Waters told Darryl Ford that he saw Young bump Blanton, Tr. 386. This  
 15 was long before Respondent terminated Waters' employment in November 2019.<sup>18</sup>

On December 6, 2018, Imerys Operations Manager Chris DiBase was also at the Whitestone mine for a management meeting. Almost immediately after the interviews of Blanton, Johnson, Harper and Jerit, Smith recommended that DiBase terminate  
 20 Blanton's employment. DiBase made the decision to do so. DiBase and Shannon Smith contend they did so because they concluded that Blanton was the aggressor in the confrontation and thus violated company rules of conduct. Imerys' General Rules, Group I, rule 4, subject an employee to potential discharge for being the aggressor in a fight, G.C. Exh. 3.<sup>19</sup>

25 Blanton left the mine and parked by one of the entrances and called the police. Imerys also called the police. A policeman came to the mine and talked to company officials and Blanton. The policeman asked Blanton if he wanted to file charges against Young. Blanton did not do so.

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<sup>18</sup> The record is silent as to why Respondent terminated Waters.

<sup>19</sup> The General Counsel at page 10 of its brief states that Shannon Smith informed Union President Ford that Imerys would terminate Blanton before talking to Blanton. This may not be correct. Ford emailed USWA District Director Daniel Flippo at 8:21 a.m. on December 6 informing Flippo that Shannon Smith had just called him to say that Imerys was terminating Blanton. Blanton testified that he was told he was being terminated right around 9:00 a.m., Tr. 56. Shannon Smith at first testified that he did not recall when he met with Blanton. Then when the General Counsel told Smith that Blanton testified it was around 9:00, Smith answered: "Around—it could be around 9 a.m.," Tr. 459-460.

This does not establish that Imerys informed the Union that Blanton was being terminated before talking to Blanton. First of all, Smith spoke to Blanton twice; first to interview him; secondly to inform him that he was being terminated, Tr. 53-55. Secondly, Imerys Operations Manager Chris DiBase testified that he arrived at the mine at about 7:30 a.m. and saw Ruel Johnson and Doug Harper sitting in the lobby, Tr. 467. I infer they were there to be interviewed about the altercation. Thus, it is likely that Shannon Smith's investigation started much earlier than he recalled at trial and that he first interviewed Blanton and called Ford before 8:21.

*The testimony of Tylor Waters*

Tylor Waters worked for Imerys from September 19, 2017 until November 4, 2019, when Respondent terminated his employment for reasons not in this record. His testimony provides the only corroboration for Robert Blanton's testimony as to what happened on December 6, 2018 and is the basis for the General Counsel's allegation in complaint paragraph 9 that Union President Ford threatened an employee with possible job loss if they provided Respondent with a witness statement.

Waters testified that on the morning of December 6, 2018 he was on a catwalk on top of Silo #1, when he saw Young and Blanton. He testified that Blanton turned towards Young and told him to get the f off him and that Young chest bumped Blanton several times.<sup>20</sup> Waters' testimony that this occurred as Blanton and Young returned from the breakroom, Tr. 169, is not consistent with the testimony of Young, or Shannon Smith's testimony and notes of his interview with Blanton.

Moreover, Waters' testimony is not consistent with that of Blanton, who testified that after he left the breakroom, Young continued to chest bump him in that back, Tr. 48-49. Blanton did not testify, as did Waters, that on the way back from the breakroom, that he turned, faced Young, told him to get the f off him and received several chest bumps, Tr. 147.

Waters' testimony, that from the bottom of the Raymond Mill steps Young told Blanton that he needed to watch what he was doing because he would end up getting fired, is corroborated by no other witnesses, not even Blanton.

Robert Blanton called union staff representative Alexander Perkins on December 6 and informed him he had been terminated. Blanton asked Perkins to call Tylor Waters, who he said had witnessed his altercation with Young. Perkins did so on about out December 7. According to Perkins, Waters told him that he did not see Young bump Blanton. Waters testified just the opposite, that he did tell Perkins that he saw Young chest bump Blanton. On this point, I credit Waters, since that is consistent with what Waters told Darryl Ford a few days later.

Blanton never asked Shannon Smith to talk to Waters or asked Waters to call Shannon Smith or another company representative. The record indicates that the first time Blanton mentioned Waters to Imerys was at the third step grievance meeting on January 10, 2019.

Waters spoke to local union president Darryl Ford on or about December 7. Waters told Ford he saw Young chest bump Blanton. He also told Ford that he heard Young warn Blanton about getting fired at the Raymond mill office. Ford told Waters that

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<sup>20</sup> This is somewhat inconsistent with Waters' testimony that, "he couldn't hear much at all" from the top of the silo, Tr. 163.

his account was not consistent with other witnesses and that Waters needed to be truthful in whatever statement he gave to the Union. Further, Ford said that if Waters lied, he could be disciplined by Imerys. Waters never contacted Imerys about what he claims to have witnessed. Waters testified that he did not give the Union a written statement because he thought Ford was writing down what Waters was telling him.

Shannon Smith testified that he was not aware of Waters' assertions until sometime after December 6. He also testified that Waters could not have seen what he claims to have seen from Waters' location, Tr. 450. Smith gave no indication how he reached this conclusion and thus, I do not credit it.

Blanton testified that while he was sitting in his car on Imerys property on December 6, he called fellow employee Drew Moss. According to Blanton, it was Moss who first informed him that Tylor Waters had witnessed the altercation. Shannon Smith's notes indicated that Moss told him he had no information about the incident. No party called Moss as a witness.<sup>21</sup>

*The Union files a grievance on Blanton's behalf; does not proceed to arbitration*

On December 13, 2018, Darryl Ford filed a grievance seeking Robert Blanton's reinstatement. The Union, by USWA Staff Representative Kelly Smith,<sup>22</sup> filed an information request and obtained Shannon Smith's interview notes of December 6, Union Exh. 4. A third step grievance meeting was conducted on January 10, 2019. On January 10, before the grievance meeting, Kelly Smith interviewed Ruel Johnson and Doug Harper in person. He asked them to read Shannon Smith's notes of his interviews with them. He asked both if the notes were accurate. They responded affirmatively. Kelly Smith spoke to Jeremiah Jerri by telephone. He read Shannon Smith's notes of his interview with Jerri and asked if they were accurate. Jerri responded that the notes were accurate.

Kelly Smith, union steward Russell Davis and Blanton attended the 3<sup>rd</sup> step grievance meeting on behalf of Blanton. Shannon Smith, Chris DiBase and Sonny Pierce attended for Imerys. At the meeting, Blanton stated that Tylor Waters witnessed the incident. The Union requested that Blanton be reinstated and made whole. Imerys denied the grievance.

After the meeting, Kelly Smith called Tylor Waters. Waters told Smith that he saw Young and Blanton on December 6 from the top of a silo. Kelly Smith testified that Waters did not mention seeing physical contact between Young and Blanton. I give no

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<sup>21</sup> No party called Josh Morrow either. According to Waters, on the evening of December 6, he told Morrow, a temporary steward, what he saw that morning.

<sup>22</sup> Smith was on medical leave until December 7, 2018. Alex Perkins serviced Local 254-06 while Smith was on leave.

weight to Kelly Smith's testimony regarding what Waters said to him. However, Waters did not testify about the substance of his conversation with Kelly Smith, Tr. 189. As stated previously, there is no evidence that Waters ever contacted Imerys about what he allegedly witnessed or that Blanton asked him to do so.

The Union declined to take the grievance to arbitration. Kelly Smith testified he made this decision on the basis on the Imerys' interview statements and his interviews of Ruel Johnson, Harper and Jerit. He concluded that Imerys had corroborative evidence that Blanton was the aggressor in the physical confrontation with Young and that Imerys had no evidence corroborating Blanton's allegations against Young. He also testified his decision was based on Blanton's reputation<sup>23</sup> and the fact that Blanton had worked for Imerys for only 4 months. He decided that the Union was unlikely to prevail in an arbitration.

## ANALYSIS

*The General Counsel did not meet its burden of proving that the Local Union, by Joseph Young, threatened Robert Blanton with physical violence or told Blanton that Union would not assist him, or physically battered Robert Blanton*

Essentially there are 2 versions of the events of December 6, 2018, Blanton and Young's. The General Counsel must prove by a preponderance of the evidence that Blanton's version is more believable than Young's. It has not done so. The General Counsel's ultimate burden of proof, as set out in Section 10(c) of the Act, is met by establishing that his version of events is "more likely so than not so," *Jim Causley Pontiac v. NLRB*, 675 F.2d 125, 127 (6th Cir. 1982); *Kuhlman, Inc.*, 305 NLRB 481, 483 (1991). First of all, the record strongly suggests that Blanton initiated the altercation by cursing at Young as soon as he reached the ground. His statements to Alexander Perkins the day before and his testimony at trial suggest that he was planning to initiate a confrontation that was likely to result in his termination.

The highly unreliable and sometimes inconsistent testimony of Tylor Waters does not tip the scales in favor of the General Counsel. If Waters saw Young chest bump Blanton, there is no satisfactory explanation for his failure to bring this to the attention of Imerys. Moreover, although I decline to credit the testimony of Shannon Smith that Waters could not have seen what he alleges he saw from the top of silo 1, this may explain why Waters never contacted Imerys. Nothing else in this record satisfactorily explains Waters' failure to share his observations with his employer.

In sum, I find that neither Robert Blanton nor Tylor Waters is sufficiently credible to meet the General Counsel's initial burden of proof.

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<sup>23</sup> Several witnesses testified to Blanton's reputation as having a bad temper and/or prior instances of outbursts, including Blanton himself, Tr. 23, 28-29, 171, 271-72, 284, 450, 467.

*The Union did not violate Section 8(b)(2) by causing or attempting to cause Imerys to discharge Robert Blanton*

Douglas Harper, a rank and file employee, who had not held any position with the Union for at least several years, reported the altercation between Robert Blanton and Chief Steward Young. There is no evidence of union involvement in Blanton's discharge. Although, Sonny Pierce interviewed Young, there is no evidence that the Union sought Blanton's discharge or that Pierce even shared his conversation with Young with Shannon Smith and Chris DiBase, who are the officials who decided to terminate Blanton.

*The Union did not violate its duty of fair representation or violate Section 8(b)(1)(A) in declining to take Robert Blanton's grievance to arbitration*

The fact that a person or union could reach a different conclusion as to whether or not to take a grievance to arbitration does establish that the Respondent unions violated Section 8(b)(1)(A).

The bargaining representative, whoever it may be, is responsible to, and owes complete loyalty to, the interests of all whom it represents.... A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.

*Boilermakers Local 132 (Kelso Marine)*, 220 NLRB 119 (1975)

While I infer that Union had animus towards Blanton on the basis on his anti-union statements and diatribes about Darryl Ford, it processed his grievance to the third step and sought reinstatement and a make-whole remedy. At the third step, Blanton had the opportunity to once again to convince Imerys of his version of events. Imerys declined to accept his account. This is in part Blanton's fault for not apprising Imerys immediately that there was a witness who allegedly supported his version of events.

In the instant case, Kelly Smith's decision not to arbitrate Robert Blanton's grievance was well within the zone of reasonableness. Imerys had 3 statements indicating that Blanton was the aggressor in his confrontation with Steward Young and no corroboration for Blanton's version of events. Moreover, by the time of the third step grievance meeting, Imerys and the Union had evidence of other outbursts by Blanton, either unwarranted or excessive given the provocation. Both were also aware of Blanton's reputation amongst some employees for having an anger management problem. All of these considerations would tend to bolster Imerys' conclusion that in his confrontation with Young, Blanton was the aggressor.<sup>24</sup>

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<sup>24</sup> Moreover, it would not to be unreasonable for Imerys to conclude that Blanton was the aggressor solely on the basis of his unleashing a torrent of profanities at Young without provocation.

Thus, it was thus not unreasonable for Kelly Smith to conclude on behalf of the Union, that arbitration for such an employee, who had worked for Imerys for only 4 months, would be futile. I conclude that the Union did not violate the Act in failing to arbitrate Blanton's grievance.

*Local Union President Darryl Ford violated Section 8(b)(1)(A) by warning Tylor Waters that he could be disciplined if he submitted a false witness statement on behalf of Robert Blanton.*

Darryl Ford told Tylor Waters that if he submitted a statement on behalf of Robert Blanton, he could be disciplined if it was false. This statement is consistent with Imerys' rules of conduct, G.C. 3, Group I, Rule 8.

Ford did not indicate that the Union would do anything if Waters submitted a statement. In fact, Waters testified that the only reason he did not submit a statement was that he thought Ford was writing down what he told Ford.

Moreover, Respondent's work rules make it clear that Waters might be subject to discipline if he submitted a false statement—which could explain why he never submitted any statement to either the Union or Imerys. Waters would indeed have been vulnerable to discipline if he submitted a statement indicating he saw the altercation from a vantage point from which, according to Shannon Smith, he could not have witnessed it.

Nevertheless, the Board has long held that the test of misconduct is not whether it succeeds or fails but, rather, whether the alleged offender engaged in conduct which tends to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in the Act. Thus, in *Local 542, International Union of Operating Engineers AFL-CIO v. N.L.R.B.*, 328 F.2d 850 (C.A. 3, 1964), cert. denied 379 U.S. 826, the court stated. at 852, that the circumstances "that no one was in fact coerced or intimidated is of no relevance. The test of coercion and intimidation is not whether the misconduct proves effective. The test is whether the misconduct is such that, under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act."

In *Steelworkers Local Union 5550*, 223 NLRB 854 (1976) the Board found that the Union violated Section 8(b)(1)(A) when its president told an employee that he thought it wrong that he was testifying in an arbitration proceeding for the employer. The union president stated further that he wished the employee would reconsider because the union president, another member or someone else could file charges against him for testifying against another union member.

While Ford's "warning" is less of a direct threat than that made in *Steelworkers Local Union 5550*, I find that it sufficiently tended to interfere or coerce Waters to violate the Act. Without the "warning" Waters would have been free to submit his statement if

he felt confident in its accuracy and Imerys would have been free to deal with it as it saw fit if it questioned its veracity.

*Imerys did not violate the Act in terminating Robert Blanton*

One could argue that Respondent Imerys's investigation of Robert Blanton's allegations was inadequate, but there is no evidence that supports a conclusion that his termination was related to his anti-union activity. Imerys had statements from 2 employees indicating that Blanton shoved Young and only Blanton's claim that Young chest-bumped him. While it is unclear why Imerys was so quick to disbelieve Blanton, there is insufficient evidence that it had anything to do with his anti-union activity.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>25</sup>

**ORDER**

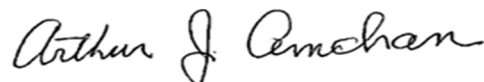
United Steelworkers Local Union 254-06, its officers, agents, and representatives, shall

Cease and desist from telling employees that they may be disciplined by their employer for submitting a witness statement to either the Union or the employer during an investigation of employee misconduct.

In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

In all other respects the complaint is dismissed.

Dated, Washington, D.C. February 26, 2020



Arthur J. Amchan  
Administrative Law Judge

<sup>25</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

**APPENDIX**

**NOTICE TO MEMBERS**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain on your behalf with your employer  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

**WE WILL NOT** warn or threaten you that you may be disciplined by your employer if you submit a witness statement either to this Union or to the employer during the employer's investigation of employee misconduct.

**WE WILL NOT** in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION,  
LOCAL 254-06, AFL-CIO**

\_\_\_\_\_  
(UNION)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)



The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

233 Peachtree Street N.E., Harris Tower, Suite 1000, Atlanta, GA 30303-1531  
(404) 331-2896, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/10-CA-232952](http://www.nlr.gov/case/10-CA-232952) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (404) 331-2870.